

JURISDICTION AND VENUE

3. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
4. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
5. Defendant is subject to personal jurisdiction in Massachusetts.
6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.
7. This Court also has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

8. Plaintiff captured the photograph, “Sandwich” (“Copyrighted Photograph”) on August 9, 2015 in Berlin, Germany. [Exhibit 1].
9. On or about between August 9, 2015 and September 3, 2015, Plaintiff posted Copyrighted Photograph to www.flickr.com/photos/17423713@N03/19810009724 (Last visited July 10, 2018). [Exhibit 2].
10. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on September 16, 2015 (Registration No.: VA 1-972-438). [Exhibit 3].
11. Beginning on or about June 6, 2017, Defendant copied and posted Copyrighted Photograph to the Defendant’s commercial website, www.tocci.com (Last visited July 10, 2018).
12. Defendant posted Copyrighted Photograph to the following URLs:

- www.tocci.com/2017/06/for-your-health-your-wallet
- www.tocci.com

(Last visited May 22, 2017). [Exhibit 4].

13. Defendant posted Copyrighted Photograph to www.tocci.com/2017/06/for-your-health-your-wallet as the feature photograph accompanying the post “Bring Your Lunch for Your Health + Your Wallet.” [Exhibit 4].
14. Defendant posted Copyrighted Photograph to www.tocci.com as a nearly full-page image on the website’s landing page. [Exhibit 4].
15. Defendant copied and posted Copyrighted Photograph as described above without the permission or authorization of Fotohaus or Foster.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.

16. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
17. Plaintiff is, and at all relevant times has been, the copyright owner or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the subject of a valid Certificate of Copyright Registration by the Register of Copyrights.
18. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute the Copyrighted Photograph to the public.
19. Plaintiff is informed and believes Defendant, without the permission or consent of Plaintiff, copied and used Copyrighted Photograph on Defendant’s commercial website, www.tocci.com. In doing so, Defendant violated Plaintiff’s exclusive rights of reproduction and distribution. Defendant’s actions constitute infringement of Plaintiff’s copyright and exclusive rights under copyright.

20. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
21. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual or statutory damages, including any profits realized by Defendant attributable to the infringement, pursuant to 17 U.S.C. § 504 for Defendant's infringement of Copyrighted Photograph.

COUNT II: REMOVAL AND ALTERATION OF INTEGRITY OF COPYRIGHT
MANAGEMENT INFORMATION PURSUANT TO 17 U.S.C. § 1202

22. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, knowingly and with the intent to conceal infringement, intentionally removed the copyright management information from Plaintiff's Copyrighted Photograph before displaying Copyrighted Photograph on Defendant's public website, www.tocci.com. In doing so, Defendant violated 17 U.S.C. § 1202(a)(1) and (b)(1).
23. As a result of Defendant's actions, Plaintiff is entitled to actual damages or statutory damages pursuant to 17 U.S.C. § 1203(c). Plaintiff is further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's

Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;

- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;
- E. Awarding Plaintiff his costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Respectfully submitted,
FOTOHAUS, LLC,
By its attorneys,

Dated: August 23, 2018

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(*Pro hac vice* application to be filed)

EXHIBIT 1



EXHIBIT 2

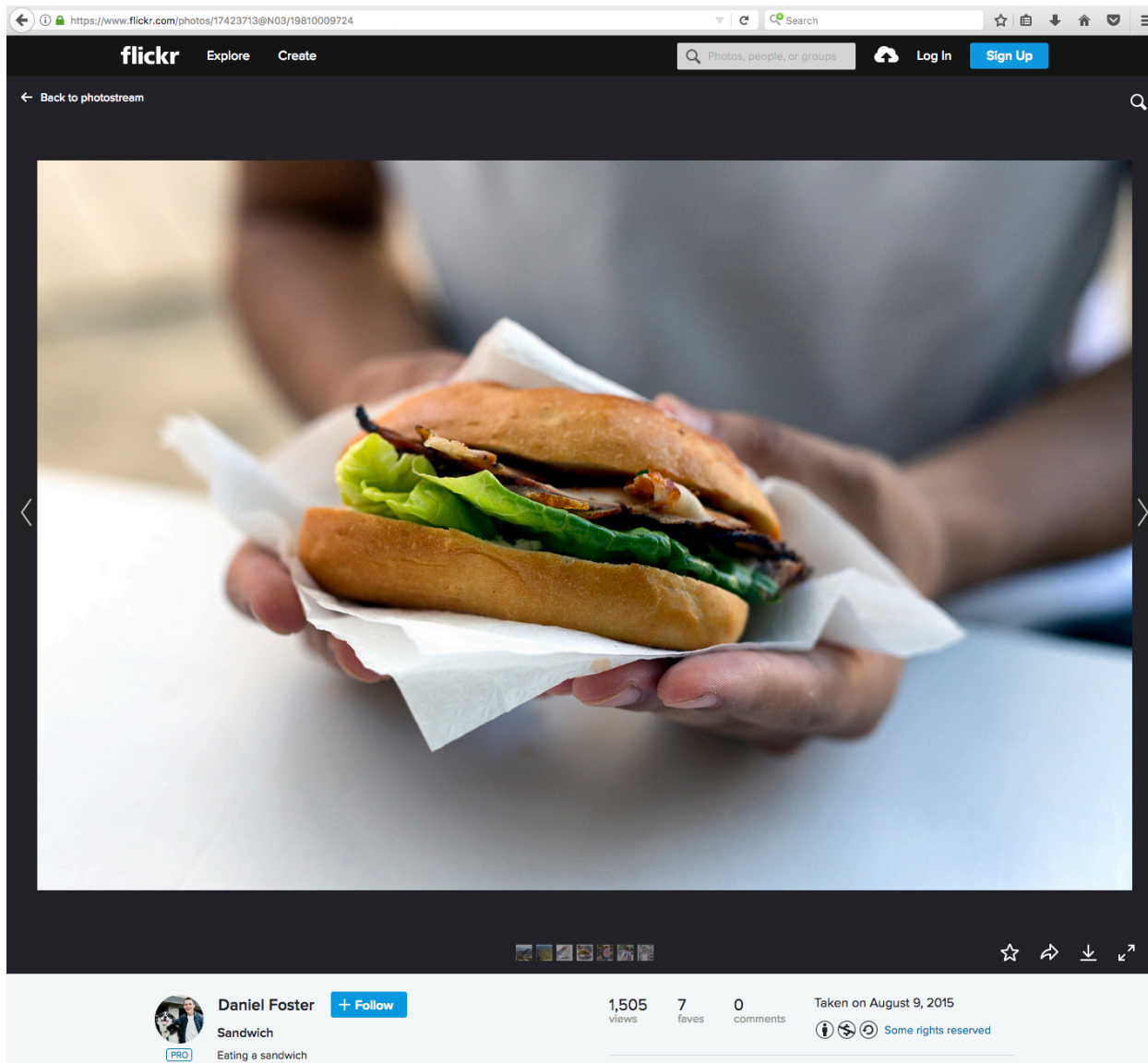


EXHIBIT 3

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number

VA 1-972-438

Effective Date of Registration:
September 16, 2015

Title

Title of Work: Group registration of 22 photographs published from June 27, 2015 - September 3, 2015

Content Title: Aerial View

Architectural View

At the Park in Berlin

At the Summit of Montserrat

Backpack

Berliner Dom

Berlin Portrait

Berlin Portrait 2

Berlin Hipster

Berlin Street

Business Work

Concrete Design

Looking Ahead

Mountain Peak

Sandwich

Setting a Bag Down

Square Portrait

Mountain Scenery

Summer in the Park

View from Below

Walking with Backpack

Page 1 of 2

Windows

Completion/Publication _____

Year of Completion: 2015
Date of 1st Publication: June 27, 2015
Nation of 1st Publication: United States

Author _____

- **Author:** Daniel Foster
Author Created: photograph
Citizen of: United States

Copyright Claimant _____

Copyright Claimant: Daniel Foster
Torstr 156, Berlin, 10115, Germany

Certification _____

Name: Daniel Foster
Date: September 16, 2015



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EXHIBIT 4

